Supreme Court of the United States.

No. 250.—October Term, 1903.

The St. Louis Mining and Milling Company of Montana and William Mayger, Appellants,
vs.
The Montana Mining Company, Limited.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[May 2, 1904.]

This was a suit brought by the appellee (hereinafter called the Montana Company) against the appellants (hereinafter called the St. Louis Company) in the Circuit Court of the United States for the District of Montana, for an injunction restraining the further prosecution of a tunnel. The facts were agreed upon, and are substantially that the Montana Company was the owner and in possession of the Nine Hour lode mining claim under a patent from the United States on a location made under the mining acts of 1872 and acts amendatory thereof; that the St. Louis Company was the owner of the St. Louis lode mining claim, holding the same under a similar title. In the St. Louis claim is a vein other than the discovery vein, having its apex within the surface limits of the St. Louis claim, but on its dip passing out of the side line of the St. Louis claim into the Nine Hour claim. The tunnel was two hundred and sixty feet underground, running from the St. Louis into the Nine Hour claim and for the purpose of reaching the vein on its descent through the latter. It was run horizontally through country rock, and between the east line of the St. Louis claim and the vein above referred to will not intersect any other vein or lode. The St. Louis Company did not propose to extend the tunnel beyond the point at which it would intersect the vein above referred to, and simply proposed to use this cross-cut tunnel in working and mining said vein. The Circuit Court, upon the facts agreed to, enjoined the further prosecution of the tunnel. That injunction was sustained by the Circuit Court of Appeals for the Ninth Circuit, (113 Fed. Rep. 900; 51 C. C. A. 530,) from whose decision the St. Louis Company has brought the case to this court.

Mr. Justice Brewer delivered the opinion of the Court.

The situation and the question can be easily presented to the mind by considering the significant lines as lines of a right-angled triangle; the vein descending on its dip being the hypothenuse, the tunnel the base line,

and the boundary between the two claims the side line of the triangle. The St. Louis Company, being the owner of the vein, may pursue and appropriate that vein on its course downward, although it extends outside the vertical side lines of its claim and beneath the surface of the Nine Hour lode claim. Such is the plain language of section 2322, R. S., which grants to locators "The exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations."

In other words, it has a right to the hypothenuse of the triangle. May it also occupy and use the base line? Is it, in pursuing and appropriating this vein, confined to work in or upon the vein, or is it at liberty to enter upon and appropriate other portions of the Nine Hour ground in order that it may more conveniently reach and work the vein which it owns? Its contention is that the mining patent conveys title to only the surface of the ground and the veins which go with the claim, and that the balance of the underground territory is open to any one seeking to explore for mineral, or at least may be taken possession of by one other than the owner of the claim for the purpose of conveniently working a vein which belongs to him. The question may be stated in another form: Does the patent for a lode claim take the sub-surface as well as the surface, and is there any other right to disturb the sub-surface than that given to the owner of a vein apexing without its surface but descending on its dip into the sub-surface to pursue and develop that vein?

We are of opinion that the patent conveys the sub-surface as well as the surface, and that, so far as this case discloses, the only limitation on the exclusive title thus conveyed is the right given to pursue a vein which on its dip enters the sub-surface. By section 2319, R. S., "all valuable mineral deposits in lands belonging to the United States" are "open to exploration and purchase, and the lands in which they are found to occupation and purchase." By section 2325 "a patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person . . . having claimed and located a piece of land for such purposes . . . shall thereupon be entitled to a patent for the land." In a subsequent part of the same section it is provided that the applicant shall pay five dollars per acre. Appellants rely upon the clause heretofore quoted from section 2322 as a limitation upon the full extent of the grant indicated by these provisions. But this limitation operates only indirectly and by virtue of the grant to another locator to pursue a vein apexing within

his surface boundaries on its dip downward through some side line into the ground embraced within the patent. It withdraws from the grant made by the patent only such veins as others own and have a right to pursue. As said by Lindley (1 Lindley on Mines, 2d ed. section 71):

"In other words, under the old law he located the lode. Under the new, he must locate a piece of land containing the top, or apex, of the lode. While the vein is still the principal thing, in that it is for the sake of the vein that the location is made, the location must be of a piece of land including the top, or apex of the vein."

And in vol. 2 (sec. 780):

"*Prima facie*, such a patent confers the right to everything found within vertical planes drawn through the surface boundaries; but these boundaries may be invaded by an outsider lode locator holding the apex of a vein under a regular valid location, in the pursuit of his vein on its downward course underneath the patented surface."

See also *Calhoun Gold Mining Company* v. *Ajax Gold Mining Company*, (182 U. S. 499, 508.) The decisions of the courts in the mining regions are referred to in the opinion of the Court of Appeals in this case, from which we quote:

"This view is in accord with the trend of all the decisions to which our attention has been directed. In *Parrot Silver & Copper Co.* v. *Heinze et al.*, (64 Pac. Rep. 326,) the Supreme Court of Montana held in substance that the owner of a mining claim is *prima facie* the owner of a vein or lode found at a depth of 1,300 feet within the vertical planes of the lines of his own claim, and that that presumption would prevail until it was shown that the vein had its outcrop in the surface of some other located claim in such a way as to give to the owners of the latter the right to pursue it on its downward course. The court said: 'Upon a valid location of a definite portion of land is founded the right of possession. The patent grants the fee, not to the surface and ledge only, but to the land containing the apex of the ledge. The right to follow the ledge upon its dip between the vertical planes of the parallel end lines extending in their own direction when it departs beyond the vertical planes of the side lines, is an expansion of the rights which would be conferred by a common-law grant.' Of similar import is *State* v. *District Court*, (65 Pac. Rep. 1020.) In *Doe* v. *Mining Co.*, (54 Fed. Rep. 935,) Judge Ross said: 'Except as modified by the statute, no reason is perceived why one who acquires the ownership or possession of such lands should not hold them with and subject to the incidents of ownership and possession at common law.' In *Consolidated Wyoming G. M. Co.* v. *Champion Min. Co.*, (63 Fed. Rep. 540,) Judge Hawley said: 'Hands off of any and everything within my surface lines extending vertically downward, until you prove that you are working upon and following a vein which has its apex within your surface claim.'"

The judgment of the Court of Appeals is

Affirmed.